United Nations A/HRC/33/51/Add.2

General Assembly

Distr.: General
8 July 2016

Original: English

Human Rights Council
Thirty-third session
Agenda item 3
Protection and promotion of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on Enforced or Involuntary Disappearances on its visit to Sri Lanka from 9 to 18 November 2015. The Working Group thanks the Government of Sri Lanka for its invitation and its cooperation before and during the visit. It considers the invitation and the Government's increasing openness to international engagement as very positive and encouraging steps. Today, the Government of Sri Lanka has the challenge to transform its promises into a concrete, comprehensive, legitimate and participatory framework to secure the rights to truth, justice, reparation and memory and guarantees of non-repetition in respect of the victims of enforced disappearances, families and Sri Lankan society as a whole, in the context of a reconciliation process.

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Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka*

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* Circulated in the language of submission only

I. Introduction

1. The Working Group on Enforced or Involuntary Disappearances, represented by Tae-Ung Baik, Bernard Duhaime and Ariel Dulitzky, visited Sri Lanka from 9 to 18 November 2015, at the invitation of the Government.

2. The Working Group thanks the Government of Sri Lanka for its invitation and for the efforts made before and during the visit, in particular by the Ministry of Foreign Affairs, to facilitate the smooth conduct of the visit. It appreciated that virtually all of the meetings that it requested were accommodated. It also appreciated the openness and cooperative disposition of the officials.

3. The Working Group also thanks the Office of the Resident Coordinator and the United Nations country team in Sri Lanka, as well as the Office of the United Nations High Commissioner for Human Rights, for their support.

4. During its 10-day mission, the Working Group visited all parts of the island, including Colombo, Batticaloa, Galle, Jaffna, Kilinochchi, Mannar, Matale, Mullaitivu and Trincomalee. The Working Group met with the President, the Prime Minister, the Minister of Foreign Affairs and the Minister of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs. It also met with the Commander of the Navy; the Commander of the Army; the Chief Justice; the Attorney-General; the Inspector General of Police; the Director of the Terrorism Investigation Division; the Director of the State Intelligence Service; the Deputy Director of the Criminal Investigation Department; the Governor of the Northern Province; the Governor of the Eastern Province; the Chairman of the Rehabilitation of Persons, Properties and Industries Authority; officials from the Office of National Unity and Reconciliation; the Government Analyst's Department; the Presidential Commission on Missing Persons; a group of parliamentarians, including the Speaker of Parliament; and members of the Human Rights Commission. The Working Group visited mass graves in Matale and Mannar, and the memorial for the disappeared in Seeduwa. It also visited the Boosa Detention Centre, the navy base in Trincomalee — including a former secret detention facility on the base — and the temporary detention facilities on the 4th and 6th floors of the building housing the Criminal Investigation Department and the Terrorism Investigation Division.

5. The Working Group met with a large number of family members and relatives of disappeared persons in all parts of the country as well as with families of missing and abducted soldiers. It held meetings with representatives of communities and civil society, including non-governmental organizations (NGOs), human rights defenders and lawyers. The Working Group especially thanks all the relatives of disappeared persons who courageously shared their testimonies, many of them for the first time.

6. Enforced disappearances have been used in a massive and systematic way in Sri Lanka for many decades to suppress political dissent, counter-terrorist activities or in the internal armed conflict. Given the context in which they occurred, many enforced disappearances could be considered as war crimes or crimes against humanity if addressed in a court of law. During and after the conflict, enforced disappearances were still carried out for purely economic purposes such as extortion by some State officials and affiliated paramilitaries. The extensive use of enforced disappearance and the almost complete lack of judicial accountability and of decisive and sustained efforts to secure the truth about the disappeared, in addition to the absence of a comprehensive reparation programme and

social, psychological and economic support for the victims[1] have left profound wounds on society and a deep sense of mistrust among relatives. This mistrust has been exacerbated by the continued and extensive presence of the military in the north and east of the country.

7. Over the years, the Working Group has transmitted communications concerning over 12,000 cases of enforced disappearance to the Government of Sri Lanka, of which 5,750 are still outstanding. A large number of cases before the Working Group concern disappearances that occurred in the late 1980s and early 1990s in relation to the violent targeting of Sinhalese youth suspected of having links to the Janatha Vimukti Peramuna or People's Liberation Front.

8. A considerable number of cases also relates to the disappearance of Tamils throughout the lengthy armed conflict between government forces and the Liberation Tigers of Tamil Eelam (LTTE), which ended in May 2009. In addition to these waves of widespread and systematic enforced disappearances, there were also other types of enforced disappearances, such as the so-called "white van" disappearances, disappearances in the context of antiterrorism operations, disappearances conducted for ransom or economic extortion or a combination of all three. At the world level, the second largest number of enforced disappearance cases before the Working Group involves Sri Lanka. That represents the tip of the iceberg of enforced disappearances in Sri Lanka, as demonstrated by the abundant documentation collected by different public inquiries and commissions established over the years.

9. A large number of abductions have also been carried out by LTTE. These are serious acts that are tantamount to enforced disappearances and should be properly investigated and sanctioned in accordance with international standards. The rights of the victims and relatives of persons disappeared at the hands of LTTE should be protected and restored equally.

10. This was the Working Group's fourth visit to Sri Lanka. It had visited the country in 1991, 1992 and 1999. During the latest visit, it observed the great potential for the full and effective implementation of the provisions of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance[2] to prevent and eradicate enforced disappearances in the country.

11. The Working Group welcomes the fact that, in the last few years, the Government of Sri Lanka has taken its engagement with the Working Group seriously. A specific interministerial task force has been created to examine and follow up on the cases before the Working Group, which has been receiving a large number of State replies concerning the outstanding cases. The Working Group noted that, recently, the responses have been more precise and substantive in comparison to previous ones, which tended to be standard, fairly repetitive and, in the great majority of cases, manifestly insufficient to clarify the cases. The Working Group hopes that this trend will continue and lead to the clarification of a large number of cases in the future.

II. Legislation

12. Sri Lanka is a party to most of the core United Nations human rights instruments. The Working Group welcomes in particular its ratification on 25 May 2016 of the

[1] In cases of enforced disappearance, the victim is not only the disappeared person but also any individual, in particular the next of kin of the disappeared, who suffers as a result of the disappearance.

[2] See General Assembly resolution 47/133.

International Convention for the Protection of All Persons from Enforced Disappearance. This ratification should be followed immediately by implementing legislation.

13. The Working Group encourages the Government of Sri Lanka to ratify other international instruments, such as the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that may have an impact on enforced disappearances and their consequences in Sri Lanka. Given the context in which enforced disappearances took place, Sri Lanka should also ratify the Protocols additional to the Geneva Conventions of 12 August 1949 and the Rome Statute of the International Criminal Court.

14. Sri Lanka lacks separate, comprehensive and integral enforced disappearance legislation to implement all the obligations emanating from the Declaration as well as other international norms, including the different aspects of prevention, investigation, penalties and reparation for the victims of enforced disappearances. This reflects the absence of a clear and effective public policy to deal with all aspects relating to enforced disappearances.

15. The Sri Lanka Penal Code does not include the autonomous crime of enforced disappearance nor does it recognize enforced disappearance as a crime against humanity. Chapter XVI of the Penal Code on offences affecting the human body recognizes crimes such as abduction, kidnapping and slavery. Sections 355 to 360 of the Penal Code set out the different types of abductions according to the intention of the perpetrators. In the few cases that have been brought to justice, the perpetrators of enforced disappearances have been charged under other crimes in the Penal Code, including kidnapping, abduction, wrongful confinement or a combination of these offences. However, either such offences do not have the necessary scope to encompass enforced disappearances or the severity of the penalty is not appropriate to the gravity of the crime. The Working Group further highlights that Sri Lanka lacks legislation that enables prosecutions of perpetrators of past atrocities, such as war crimes and crimes against humanity.

16. The Working Group received extensive information about the Prevention of Terrorism Act and on how a number of its provisions could facilitate the occurrence of enforced disappearance. In particular, the Act allows arrest without a warrant and permits detention for an initial period of 72 hours without the person having to be produced before a court (sect. 7) and thereafter for up to 18 months on the basis of a detention order issued by the Minister of Defence (sect. 9). In practice, however, these provisions often serve as grounds to detain suspects for many years without judicial review. The lawfulness of a detention order issued by the Minister of Defence cannot be challenged in a court of law. The Act also removes the power of a judge to order bail or to impose a suspended sentence (sect. 7 (1)) and places on the accused the burden of proving that a confession was obtained under duress. Furthermore, despite the fact that section 13 (2) states that any person in respect of whom a detention order has been made shall be informed of the unlawful activity in connection with which the order was made, lawyers often experience difficulties obtaining a copy of the detention order. According to article 10 (2) of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance:

> accurate information on the detention of [disappeared] persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

As such, strict and effective regulation and limitation of the use of administrative detention or deprivation of liberty without immediate and proper judicial oversight is an essential preventive measure to avoid enforced disappearances. In addition, the access to lawyers

under the Prevention of Terrorism Act is limited and subject to the approval of the Chief of the Terrorism Investigation Division, which is in clear violation of the rights of the accused. In fact, the few persons who are still detained in Boosa under section 9 (1) of the Act have reportedly not been allowed to meet their lawyers in the detention centre for many years. According to information received after its visit, since March 2014, the largest number of arrests made under the Act in the Northern and Eastern Provinces seems to have been recorded in April 2016. There was also at least one incident of a person being abducted in a white van in Jaffna and subsequently found to be detained by the Terrorism Investigation Division under the Act.

17. Secret detention is totally unacceptable under article 10 (1) of the Declaration. The Working Group visited the navy base in Trincomalee and the two underground complexes containing 11 cells that were used in the past as secret detention facilities. The Working Group also met with Criminal Investigation Department officers who are investigating the case of 11 individuals who had been abducted in Colombo in 2008 and brought to Trincomalee. The Working Group thanks the Navy Commander and the Director of the Criminal Investigation Department for facilitating access to the navy base and the cells. The Working Group looks forward to receiving an update on the results of the investigation of this case and recommends that thorough and independent investigations into all alleged instances of secret detention be undertaken.

18. In February 2015, Parliament passed the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015. While this is an important achievement, the Working Group received information about some shortcomings. The Act does not explicitly offer protection to witnesses who are charged with or convicted of crimes, officers of the court, members of the Bar or members of the judiciary. In addition to providing for the establishment of a National Authority for the Protection of Victims of Crime and Witnesses (sect. 11 (1)), the Act tasks the Inspector General of Police with establishing and maintaining the Victims of Crime and Witnesses Assistance and Protection Division (sect. 19 (1)) and provides that a Senior Superintendent of Police shall be placed in charge of the Division. This is of particular concern because, during its visit, the Working Group heard many allegations that threats against families and witnesses often came from the police and that witnesses were afraid of the police. The Act does not clearly specify the procedure and criteria for admitting or refusing a person in the protection programme, nor how to conduct the threat assessment. In addition, the Act does not provide any mechanism to appeal or review decisions to terminate protection.

III. Truth

19. Owing to the lack of a comprehensive, transparent and effective mechanism to find missing and disappeared persons, many families continue to experience great emotional distress. While many families have attempted to come forward and seek remedies from the authorities or from the different ad hoc mechanisms set up by the Government, most of them have been unable to obtain accurate information regarding their disappeared relatives. In many cases, these families and activists have been subject to harassment and intimidation as a result of their truth-seeking activities.

20. The families of the disappeared in Sri Lanka have waited too long to know the truth about the fate or whereabouts of their loved ones. This is an absolute right under the Declaration and an obligation that the State should meet in accordance with international law.

Former truth-seeking initiatives

21. A number of initiatives had been set up in the past with the objective of addressing the phenomenon of enforced disappearances in Sri Lanka, including at least 11 presidential commissions of inquiry specifically mandated to inquire into large-scale disappearances; 2 presidential commissions of inquiry mandated to inquire into other matters, including disappearances; and 2 departmental units created to address disappearances.

22. The Working Group will refer to the two most recent initiatives. In 2010, President Mahinda Rajapaksa established the Lessons Learnt and Reconciliation Commission to investigate the breakdown of the 2002 ceasefire agreement and identify lessons learned to promote national unity and reconciliation. The Commission was not exclusively devoted to the issue of disappearances, however, it made several constructive recommendations on the issue. It highlighted the failure of the Government to implement the recommendations on enforced disappearances made by previous commissions and the resulting lack of trust and scepticism on the part of the population regarding the value of these mechanisms.

23. Among the issues highlighted in the Commission's 2011 report was the large number of allegations of disappearances that it had received and the evident lack of action by the authorities when formal complaints were made. The Commission referred to the State responsibility to properly investigate these disappearances and to bring perpetrators to justice and made specific reference to the prosecution of military personnel involved in the disappearance of persons who had surrendered to the armed forces. It also highlighted the need to criminalize enforced disappearances as an individual crime and to develop a centralized data-collection system on missing persons. Most importantly, the Commission referred to the relatives of missing persons and affirmed their right to truth and to legal remedies. It recommended that the Government assist families in dealing with the trauma of not knowing the whereabouts of their family members. The Commission also recommended the appointment of a special commissioner of investigation to investigate alleged disappearances and provide material to the Attorney General to initiate criminal proceedings.[3]

24. On 15 August 2013, President Rajapaksa appointed a new presidential commission to investigate complaints regarding missing persons. Composed of three people, the new commission is also known as the Paranagama Commission, after the name of its Chair.

25. The original mandate of the Paranagama Commission was to investigate whether anyone who was resident in the Northern and Eastern Provinces during the period from 10 June 1990 to 19 May 2009 had been abducted or had disappeared from their place of residence. Its mandate was eventually expanded to cover the entire period of the armed conflict from 1983 to 2009 and to investigate violations of international law during the last stages of the conflict.

26. The Government had depicted the Paranagama Commission not only as the primary instrument to address grievances of the families of the disappeared but also, given the expansion of its mandate, as the sole mechanism for addressing wartime violations of international human rights and humanitarian law. However, the Commission has been the subject of criticism owing to several shortcomings. For example, it has been criticized as being structurally flawed as it depends on the Executive for the appointment of its members, financing and follow-up actions. The expansion of its mandate in 2014 to include investigations into broader violations related to the conflict and which has focused in particular on the abuses of LTTE also raised strong concerns among civil society that this detracted from the Commission's ability to deliver on its primary responsibility to assist the

[3] See A/HRC/30/CRP.2, para. 511.

families of the disappeared. The extension of the mandate created distrust, particularly among families in the north and east, as it was announced after thousands of testimonies had already been heard without any specific result or findings being shared.

27. There was also a lack of public confidence that the Commission effectively promoted truth, justice and redress, as few investigations were under way as a result of its endeavours. Of the over 20,000 complaints about missing persons received by the Paranagama Commission, only 150 have been referred for further investigation.[4]

28. Finally, the Paranagama Commission has been largely criticized by civil society and family organizations for not demonstrating empathy with the relatives of the disappeared. There were repeated complaints as to the quantity and quality of the interpretation provided during hearings, with not enough interpreters for the volume of complaints received and their lack of adequate contextual knowledge of the affected areas and key issues related to incidents. The Commissioners were also perceived as being insensitive towards women, who comprised the largest number of complainants and who experience targeted and differentiated consequences from the disappearance of their loved ones.

29. The Paranagama Commission submitted two reports to the President in 2015: an interim report explaining the work carried out with regard to its first mandate on missing persons, and a final report in September 2015, which, as reported to the Working Group by relatives of several disappeared persons and civil society organizations, did not satisfy the expectations of the victims. It focused exclusively on the Commission's second and broader mandate relating to human rights violations during the conflict and only indirectly addressed the issue of missing persons and enforced disappearances. Furthermore, some of the people interviewed during the Working Group's visit argued that references in the report to persons who were missing and allegedly found or reportedly seen overseas confirm the biases of the Commission.

30. There is uncertainty about the current status of the Commission based on declarations by high-ranking government officials that its activities would be suspended. However, up to late 2015, the investigation team continued to work and had contacted relatives of disappeared persons. The extension of the Commission's mandate and activities beyond the publication of its reports has created confusion, in particular given the Government's proposal to create an office of missing persons.

31. All of the above-mentioned mechanisms have been characterized by problems, ineffectiveness and biases. None of the commissions covered the period between 1987 and 1990 during which large numbers of enforced disappearances linked to the Janatha Vimukti Peramuna uprising were allegedly perpetrated. The so-called white van disappearances, which were not strictly related to the armed conflict, have also not been addressed by any of the more recent mechanisms. Most of the mechanisms have also been criticized for their lack of independence and transparency and their recommendations, when made publicly available, were never followed up in a systematic manner. While some of the commissions were able to identify alleged perpetrators, they were rarely followed up by criminal investigations and convictions. Most importantly, these mechanisms did not achieve the ultimate goal of providing victims with meaningful responses to clarify the fate or whereabouts of the disappeared.

32. Despite their many shortcomings, these mechanisms collected an important array of information. However, most of the information has not been formally assessed, and most of the reports have not been published in their entirety; significant portions of information and

[4] Information provided by the Commissioners during the interview with the Working Group in November 2015.

supporting material have been withheld. Therefore, a priority for any new State institution charged with searching for disappeared persons should be to refer to this information as a starting point, not only to search for truth, but also to launch and/or continue relevant investigations and prosecutions. Furthermore, all existing reports should be made public and easily accessible.

33. In compiling information, there is need to avoid the revictimization of the families of the missing and disappeared by not requesting them to repeat testimony already provided to previous commissions.

Office of Missing Persons

34. The Working Group welcomes the proposal to create the Office of Missing Persons charged with searching for disappeared persons. Following its visit, the Working Group was informed that on 24 May 2016 the Cabinet had approved the establishment by parliamentary act of the Office as an independent institution. The Working Group also received information from the Government that the International Committee of the Red Cross was providing technical expertise in this area.

35. The Working Group supports the idea of a State institution dedicated to the humanitarian task of searching for the thousands of people who disappeared in the country and emphasizes the need for a State policy representing society as a whole to address the widespread conviction of hundreds of families that a proper truth-seeking process will result in the return of their loved ones. If the outcome of a serious, legitimate and sincere truth-seeking process is different from what is expected by the families, the Government and society will need to provide those families with all necessary support.

36. The Working Group also welcomes the proposal by the Government to establish a commission on truth, justice, reconciliation and non-recurrence. It considers that such a commission could play an important role if it overcomes all the shortcomings of the previous truth-seeking initiatives.

Mass graves

37. The Working Group visited mass graves in Mannar and Matale. It noted clear problems in the way that the sites had been secured and the samples and evidence handled.

Mannar mass grave

38. At the end of 2013, the skeletal remains of 83 women and children were discovered in Mannar, in the Northern Province. The skeletons are being kept at the University of Peradeniya. In this respect, concerns have been expressed about the reasons why the skeletons were removed from the grave and the weak measures taken to protect them. Furthermore, it is not clear whether all of the bodies buried in the area have been accounted for. The court gave instructions for statements from relatives who believe that their family members were buried at the site to be recorded. As a result, some family members of disappeared persons have provided affidavits to the court. However, concerns have been expressed about the slow pace at which the police is investigating the case.

Matale mass grave

39. The Matale mass grave was uncovered on 26 November 2012, after about 154 skeletal remains were found near the site of the Matale District Hospital in the Central Province. A judicial inquiry was launched the same day at the Matale Magistrate Court.

There have been conflicting reports about the remains found in the grave, including about the period when the inhumations would have been carried out. In a report requested by the judicial medical officer in December 2012, it was indicated that the skeletons were buried in piles and that some of them exhibited clear signs of torture and extrajudicial execution. The report concluded that the inhumations had been carried out between 1986 and 1990.

40. A presidential commission was established in June 2013 to probe into the Matale mass grave. Around the same time, the sitting magistrate on the case was suddenly transferred to Colombo for reportedly unclear reasons. In another report, dated 2014, it was indicated that, based on a radiocarbon dating of only four samples, the inhumations predate 1950. Various sources have expressed concern with regard to the chain of custody of the samples and the process by which only some were sent for testing. Many complained as to the possible political interference that would affect the continuity of the investigation and the judicial inquiry. On 24 July 2015, the case was suspended pending recommendations by the Attorney General or a senior police officer; the case remained suspended as at the time of writing of the present report.

41. There are a number of other mass graves in Sri Lanka that the Working Group was unable to visit and which are most likely related to cases of enforced disappearance.

42. The Government should be proactive in ensuring the proper investigation of known mass graves and in the identification of new ones. Unfortunately, the Government is not taking any active measures to uncover possible grave sites until it is compelled to investigate by a court order. At the same time, given that a comprehensive State policy to search for disappeared persons would likely give rise to the discovery of more graves, the Government should reinforce the forensic capacity and technical expertise of all those involved in the exhumation and identification of the remains and in the ensuing criminal investigation.

43. The Working Group welcomes the establishment of a new DNA laboratory in the Government Analyst's Department, but is concerned that it may not have the capacity to deal with the increasing workload.

44. The Working Group underlines the importance of rendering public and fully accessible all archives, including military archives, that may contain information on the fate and whereabouts of disappeared persons. In particular, the Working Group heard consistent and reliable accounts about people who had disappeared after surrendering to the army during the last days of the conflict with LTTE in May 2009. It also heard several tragic stories of parents being taken away and disappeared together with their children during that phase of the conflict. In its report on its investigation on Sri Lanka, the Office of the United Nations High Commissioner for Human Rights stated that "there are reasonable grounds to believe that a number of military cadres, who had laid down arms and were thus hors de combat, were unlawfully killed after having surrendered unarmed to the security forces" and that "a number of LTTE cadres, such as those belonging to the political wing, and other individuals not or no longer taking direct part in hostilities, including children, were also extrajudicially executed".[5] The Government has the responsibility and the obligation to do its utmost to investigate these allegations, establish the truth and bring all those responsible to justice.

[5] See A/HRC/30/CRP.2, para. 285.

IV. Justice

45. Impunity for enforced disappearances remains a major challenge in Sri Lanka. Progress in establishing accountability for violations committed in the past has been slow. Victims seek more accountability as many believe that the majority of the perpetrators have escaped justice so far. The Declaration on the Protection of All Persons from Enforced Disappearance requires that the State guarantee to the victims of enforced disappearance an effective remedy that includes a thorough and impartial ex officio investigation with a view to identifying those allegedly responsible for the disappearance and imposing the appropriate penalties. The Working Group has reiterated on many occasions that impunity for enforced disappearances is a source of future violations. No one suspected of committing or being complicit in enforced disappearances, irrespective of rank or official position, can be immune from criminal investigation, trial and punishment. The Declaration also stipulates that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. As such, allegations that enforced disappearances occurred in the context of fighting terrorism or were the necessary consequence of war or that the perpetrators were following orders from superiors cannot be used as exculpatory reasons or defence. Nevertheless, the Declaration provides that mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance (art. 4).

46. The Working Group received information on a few cases relating to enforced disappearances into which investigation and prosecution proceedings had been initiated. For the vast majority of cases, there is absolute impunity. The State should take decisive action in this regard. Overcoming the pattern of structural impunity will require strong leadership, political will and concerted efforts.

47. The Working Group received extensive and consistent information indicating that fear discouraged relatives from filing complaints in relation to enforced disappearances. The Working Group also received innumerable testimonies from families expressing their strong mistrust in the administration of justice in Sri Lanka, including the courts, the investigative bodies and the Attorney General's Department. Several sources expressed serious concern about the lack of independence of the Attorney General's Department and its approach to prosecution for disappearances that occurred in the past. Finally, sources reported that there were significant impartiality and conflict of interest issues in the light of the fact that the Attorney General's Department both prosecutes State actors suspected of disappearance-related crimes and defends the same State actors in legal proceedings such as in relation to habeas corpus writs.

48. According to several sources, the authorities — in particular the prosecution services — try to discredit disappeared persons by claiming that they have been involved with LTTE, without properly substantiating these allegations. In several cases, the relatives of the victims of enforced disappearance have been subjected to intimidation, threats and reprisals because they insisted that a proper investigation be carried out. The Working Group observed severe problems relating to investigations into enforced disappearances, including omissions, delays and lack of due diligence. Many authorities, both civil and military, allegedly refuse to work or cooperate with the investigating authorities.

49. The investigation of the secret detention centre at Trincomalee navy base highlighted some of the problems and demonstrated the limited possibilities of achieving full and complete justice in Sri Lanka, if international judges, prosecutors and investigators are not integrated. According to information received by the Working Group during its visit

to the base, the disappearance of only 11 individuals is being investigated. However, it is very clear that many more people were detained at the centre. It appears that the secret detention centre had been used for many years to detain and torture many more than these 11 individuals. Although the criminal investigation was launched in 2009, the investigation team was only allowed to enter the navy base in 2015. This six-year delay is indicative of the lack of adequate political will and cooperation on the part of the highest authorities and the navy to conduct proper investigations. It is also possible that detainees may have been protected from disappearance or torture if access had been provided earlier as, apparently, the detention centre was functioning up to at least July 2010. So far, not all of the names of the navy and intelligence officers who were involved in the operation of the secret detention centre have been disclosed to the investigation team. The current condition of cells and the area around the detention centre raises serious concerns about the possibility of conducting additional forensic studies. It is unclear whether all the documentation that could shed light on the situation and on possible perpetrators has been requested or produced, such as communication logs, correspondence, file photographs of detainees, logs of guard teams at the entrance of the base, transport logs and records of food and other equipment brought into the centre. It was clear to the Working Group that the area around the detention sites had not been thoroughly investigated, all possible evidence had not been fully and professionally collected and other similar facilities in the area had not been completely searched. After its visit, the Working Group was informed that a Chief Magistrate had ordered the Criminal Investigation Department to launch an inquiry on some bones that had been found in the underground prison during the Working Group's visit.

50. In order to overcome these problems, there has been much discussion about creating a proper judicial mechanism for dealing with serious human rights violations, crimes against humanity and war crimes, including enforced disappearances. The Working Group supports the recommendation put forward by the United Nations High Commissioner for Human Rights that Sri Lanka should draw on the lessons learned and good practices of other countries that have succeeded with hybrid special courts, integrating international judges, prosecutors, lawyers and investigators.[6] The proposed judicial mechanism should build the confidence of all Sri Lankans, in particular the victims, in relation to the independence and impartiality of the process and its full respect for international human rights law, international humanitarian law and international criminal law.

51. In considering the integration of international elements into the judicial accountability mechanism, Sri Lanka should guarantee that all investigations are properly and professionally conducted. A vetting process should be put in place for all judicial and other officials of the envisaged mechanism so as to guarantee the expertise, independence and impartiality of those involved in the whole judicial accountability mechanism, bearing in mind also that enforced disappearances and other crimes against humanity can never be dealt with by a military jurisdiction. The Working Group considers that trying only few emblematic cases and prosecuting a token number of perpetrators will not be sufficient for Sri Lanka to comply with its international obligations nor to satisfy the expectations of the victims and important sectors of society. Given that, in many instances, enforced disappearances occurred in a systematic way, the mechanism should have the expertise, capacity and credibility to investigate this aspect. The passage of time since most of the enforced disappearances started to occur is in direct proportion to the constraints — and, in some cases, the impossibility — of obtaining evidence or testimonies that would help to clarify the disappearances, identify the possible perpetrators and participants and determine criminal responsibility. The delay in starting, conducting or concluding timely

[6] See A/HRC/30/61, para. 88.

investigations do not exonerate State authorities from making the efforts necessary to comply with the obligation to secure the right to justice.

52. For judicial efforts to succeed, incentives will have to be provided for witnesses to be willing to testify. The Working Group received reports that persons with crucial information have refused to testify out of fear. It was also informed about instances of harassment of witnesses.

53. The Working Group is extremely concerned that relatives of disappeared persons and organizations have been harassed and intimidated in different ways owing to their involvement in the investigation of cases of enforced disappearance. The Working Group was informed that relatives of the disappeared have received several visits from intelligence officers, police officers or army personnel and have been questioned about their activities and the meetings they attend. Most of the allegations pointed directly to officers of the Criminal Investigation Department. Civil society organizations supporting the relatives of the disappeared in their search for truth and justice have also been subjected to open threats and intimidation or pressure to discontinue their quest. The Working Group also heard allegations that some of the people with whom it had met had been questioned about its visit. In a democratic society, such harassment and control are absolutely impermissible and constitute an additional human rights violation. Such behaviour may even be considered as an attempt to cover up the disappearances and should be severely sanctioned. The Working Group urges the Government to call for these types of activities to cease immediately and that the highest authorities make a clear statement affirming the legitimacy of the activities of relatives and their associations to search for truth and on the State's obligation to protect and ensure the right of relatives of the disappeared to seek truth, justice, reparation and guarantees of non-repetition, in accordance with article 13 (3) and (5) of the Declaration.

54. In some cases, police or intelligence officers have visited relatives of disappeared persons to genuinely inquire about the case concerning their loved ones. However, many times they ask the same basic questions that the relatives have already answered several times. In that respect, the Working Group is concerned about the retraumatization effect of such repetitive inquiries and that those responsible for the investigations seem to be relying on the information provided by relatives rather than assuming the investigations as a State obligation.

55. The Working Group is extremely concerned about detailed allegations that Criminal Investigation Department personnel have engaged in sexual harassment and violence against mothers or wives of disappeared persons, including in exchange for providing information on their relatives' cases. This should cease immediately and those responsible should be severely punished. The Working Group is also concerned at consistent allegations that, in many instances, relatives are asked by unidentified individuals for money in exchange for bringing back loved ones, which almost never happens.

56. The Working Group received extensive information on the application of the writ of habeas corpus in Sri Lanka and notes that habeas corpus has not been as effective as it could be. In the few cases that habeas corpus proceedings have moved forward, the writs took an unreasonably long period of time, which undermined their effectiveness. The first hours or days following a disappearance are essential to the protection of the victim and the potential success of the habeas corpus. It is of particular concern to the Working Group that magistrates appear to act in a very passive manner in most habeas corpus proceedings, limiting themselves to requesting written information.

57. The Working Group welcomes the appointment of new commissioners to the Human Rights Commission of Sri Lanka and recommends that the Government ensure the allocation of adequate human and financial resources to enable the commission to effectively carry out its mandate.

V. Reparation

58. All victims of enforced disappearances have the right to full reparation in accordance with article 19 of the Declaration.

59. The Working Group received extensive testimonies about the extremely difficult economic situation that the relatives of many of those who have disappeared suffer. In particular, the Working Group witnessed how many mothers and wives have been left in situations of desperate economic hardship without any type of State support.

60. As stated earlier, in cases of enforced disappearance, the victim is not only the disappeared person but also any individual, in particular the next of kin of the disappeared, who suffers as a result of the disappearance. Relatives endure pain and anguish as a consequence of the continuous uncertainty about the fate or whereabouts of their loved ones.

61. In the vast majority of cases, the disappeared persons are men and it is the women who are left alone. The gendered dimension of the phenomenon of enforced disappearances should be duly taken into consideration. The Working Group met with hundreds of women — mothers, wives, sisters, daughters — of disappeared persons. They shared their stories of suffering, economic hardship and despair resulting from the disappearance of their loved ones. For some of them, several members of their family have disappeared. Many of them referred to the violence, in particular sexual violence, to which they were subjected during the conflict or in their search for truth and justice. These women suffer multiple and intersecting forms of discrimination and violence, including owing to harmful traditional practices in their communities.

62. As in virtually all situations of massive human rights violations, children in Sri Lanka have also paid a high price. Many have lost one or both parents. In its general comment on children and enforced disappearances,[7] the Working Group explains how enforced disappearance affects the rights of children in a different way than those of adults. The Working Group heard tragic stories of children in Sri Lanka being disappeared together with their parents. During its visit, attention for the educational needs of the children of disappeared persons was consistently highlighted as a priority by their families.

63. The chapter on reparations in the 2011 report of the Lessons Learnt and Reconciliation Commission is very brief and focuses only on the Rehabilitation of Persons, Properties and Industries Authority, thereby disregarding other forms of compensation or restitution that may be required and desirable. While Act No. 29 of 1987 that established the Authority provides that the functions of the Authority shall be, inter alia, to assist in the rehabilitation of affected persons by way of an outright grant or any such other means as the Authority may deem necessary, the Authority focuses mainly on the reconstruction of damaged properties. Despite the lack of comprehensive and cohesive national standards on reparation, the Commission did not use this opportunity to formulate such standards.

64. The lack of a coherent, cohesive and comprehensive reparation policy has resulted in a number of victims of enforced disappearance being unable to receive full and integral reparation. According to the information received, relatives of disappeared persons can receive compensation of up to 100,000 rupees upon presentation of a death certificate. This provision is included in legislation dating back to 1988 and the amounts have not been updated since 2009. In contrast, relatives of civil servants who are deceased receive up to 200,000 rupees. Regrettably, the Working Group was informed that the authorities generally make the granting of compensation conditional upon acceptance of death

[7] See A/HRC/WGEID/98/1 and Corr.1

certificates by the families of the disappeared, which, de facto, puts an end to the search for truth and justice regarding the disappearance. This has often been done under duress. In this respect, the Working Group emphasizes the need for legislation that clearly stipulates that the acceptance of a death certificate where a person continues to be disappeared is not a bar to seeking justice or truth. Thus, in conformity with the Working Group's general comments on article 19 of the Declaration regarding the right to compensation, no victim of enforced disappearance shall be presumed dead over the objections of the family.[8] The Working Group therefore welcomes the recent adoption of a policy regarding the issuance of certificates of absence instead of death certificates. The Working Group is concerned that, in many instances, death certificates were sent to families without their express request and, often, they did not properly reflect the disappearance of the person or the alleged author of the disappearance.

65. The Working Group was also informed that relatives of disappeared persons who were alleged to have had ties to terrorist organizations do not have the right to this compensation. Under the international obligations of Sri Lanka, every victim of enforced disappearance is entitled to receive full and integral reparation without any type of discrimination. The Working Group was also informed of the budgetary limitations of the Rehabilitation of Persons, Properties and Industries Authority, which has resulted in a large backlog. If resources are not increased, it would take at least five to six years before current applicants are compensated.

66. In addition to the punishment of perpetrators and the right of victims to monetary compensation, the right to obtain reparation for acts of enforced disappearance under article 19 of the Declaration also includes the means for as complete a rehabilitation as possible. This obligation refers to medical and psychological care and rehabilitation for any form of physical or mental damage, as well as to legal and social rehabilitation, guarantees of non-repetition, the restoration of personal liberty, family life, citizenship, employment or property, the return to one's place of residence and similar forms of restitution, satisfaction and reparation that may address the consequences of the enforced disappearance.[9]

67. In the context of resettlement, the Working Group encourages the authorities to take into account, inter alia, the link between displacement and disappearance. The relatives of many of the disappeared are also suffering from displacement and are therefore suffering further victimization. Similar attention should be paid to the restitution of land for the families of disappeared persons who have been displaced. The Working Group was particularly disturbed at the extensive and continuing military occupation of private land, particularly in the Northern and Eastern Provinces. It was informed that a significant number of people in these provinces continue to be displaced, including owing to the failure on the part of the Government to release lands that are occupied by the military. The Working Group was also informed that the Government has not taken adequate steps to facilitate the voluntary return of Muslims who were forcibly expelled by LTTE from the Northern Province in 1990. The Working Group welcomes the commitment by the Government to give priority to families of missing persons in the housing programme of the Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs and its recognition of the importance of releasing land in the Northern and Eastern Provinces.

[8] See E/CN.4/1998/43, para. 74.

[9] Ibid., para. 75.

VI. Memory

68. The Working Group visited the Monument for the Disappeared in Raddoluwa Junction, Seeduwa, in the Western Province, which was erected at the place where the bodies of two disappeared trade union activists, H.M Ranjith and H. Lional, were found in 1989. While the monument and other memorials serve as a constant reminder of the atrocities committed and are a place for families to honour their disappeared loved ones, the Working Group is concerned about the limited number of memorials and spaces for people to remember and reflect, especially given the dimension of the enforced disappearances in Sri Lanka. The Working Group is especially concerned that there is no government-supported memorial built for the victims of enforced disappearances. Memory should be a key component in the transitional justice programmes, including as a fundamental element of reparation and a way of preventing the recurrence of further massive human rights violations. The Working Group stresses the importance of State-sponsored memorials as well as the State's support for civil society remembrance initiatives, including their proper maintenance.

69. The Working Group recognizes the importance of the declaration of peace made by the Government at the Independence Day ceremony on 4 February 2015, which pays respect to all those who lost their lives in the internal armed conflict and pledges never to allow the recurrence of such violence. It also recognizes the significance of the singing of the national anthem in Tamil on 4 February 2016. With respect to Victory Day (renamed from Armed Forces Remembrance Day), which is marked on 19 May to pay tribute to all those who sacrificed their lives for the country, the Working Group noted that, although there was no triumphalist exhibition of military strength, the event nevertheless focused on members of the armed forces and their families and that at no point were the civilians who lost their lives in the armed conflict mentioned. A more comprehensive memorial and remembrance policy should be devised and implemented.

IV. Conclusions

70. **The Government's invitation to the Working Group and its increasing openness to international engagement are very positive and encouraging steps. Today, the challenge facing the Government of Sri Lanka is to transform its promises into a concrete, comprehensive, legitimate and participatory framework aimed at securing the rights to truth, justice, reparation and memory, and guarantees of non-repetition for the families of the disappeared and Sri Lankan society as a whole, in the context of a reconciliation process.**

71. **It is encouraging that the Government is proposing a comprehensive public policy to deal with prevention, investigations, sanctions and reparation for the victims of enforced disappearances.**

72. **Overall, the victims of enforced disappearances have very little faith in the justice system, the prosecution services, the police or the armed forces. The chronic pattern of impunity still exists with regard to cases of enforced disappearance and sufficient efforts now need to be made to determine the fate or whereabouts of persons who have disappeared, punish those responsible and guarantee the right to truth and reparation.**

73. **Any successful initiative must therefore be the result of a broad, inclusive, gendered and participatory consultative process. Any comprehensive policy should address all the enforced disappearances that took place in the country, regardless of the time of the disappearance and without any type of discrimination. The**

Government will need to adopt bold steps to reach out to and create confidence in the victims. In addition, good faith measures and concrete results are needed to restore trust between the State and all sectors of society as well as between all groups and communities.

74. The Working Group reiterates its willingness to continue its constructive dialogue with the Sri Lankan authorities and offers its unreserved support for the full implementation of the Declaration on the Protection of All Persons from Enforced Disappearance.

75. The Working Group reaffirms its solidarity with the victims of enforced disappearance. Their continued suffering is living proof that enforced disappearance is a continuous offence and a permanent violation of their human rights so long as the fate or whereabouts of the disappeared person is not clarified.

76. The Working Group acknowledges the work done by human rights defenders, civil society organizations, lawyers and all those who work indefatigably, including in adverse conditions, to eradicate this terrible practice.

VIII. Recommendations

General

77. The Working Group recommends that the Government of Sri Lanka:

(a) Take decisive actions and give clear orders at the highest level to stop surveillance, threats, intimidation, harassment — including sexual harassment — and abuses against relatives of disappeared persons and those acting on their behalf;

(b) Guarantee the safety of those who met with the Working Group and protect them against any form of reprisal, threat or intimidation;

(c) Instruct all public officials that those actions will not be tolerated and will be punished accordingly.

Legislation

78. The Working Group recommends that the Government of Sri Lanka:

(a) Recognize the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of individuals subject to its jurisdiction, in accordance with article 31 of the International Convention for the Protection of All Persons from Enforced Disappearance;

(b) Ratify:

(i) The Rome Statute of the International Criminal Court;

(ii) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(iii) The Protocols additional to the Geneva Conventions of 12 August 1949;

(c) Adopt comprehensive legislation on enforced disappearances without delay and ensure that it provides for:

(i) A specific procedure for finding a disappeared person;

(ii) A national register of forcibly disappeared persons;

(iii) **Full access to this register by relatives of the disappeared, lawyers, human rights defenders and any other concerned person;**

(iv) **The declaration of absence in respect of enforced disappearance;**

(v) **Full protection and support to the relatives of disappeared persons and to witnesses;**

(vi) **The right to full compensation;**

(vii) **The explicit definition of enforced disappearance as a continuous crime to which amnesties, immunities or the statute of limitations cannot be applied, notably in the context of crimes against humanity;**

(viii) **The rights of victims to pursue truth and justice even if a certificate of absence is issued and coverage of all disappearances regardless of the time of their occurrence;**

(ix) **Details about the resources available to families upon the issuance of a certificate of absence;**

(d) **Swiftly make enforced disappearance a separate offence consistent with the definition contained in the Declaration on the Protection of All Persons from Enforced Disappearance and punishable by appropriate penalties that take into account its extreme seriousness. The offence should also cover the various modes of criminal liability, including committing, ordering, soliciting or inducing the commission of, attempting to commit, being an accomplice to or participating in an enforced disappearance. It should also expressly provide for the sanctioning of command or superior responsibility for such crime;**

(e) **Immediately repeal the Prevention of Terrorism Act and replace it by legislation that is in conformity with the international obligations of the State;**

(f) **Review the Assistance to and Protection of Victims of Crime and Witnesses Act of 2015 in order to incorporate better safeguards for the independence and effectiveness of the victim and witness protection programme in line with international standards. Revisions must include the establishment of a well-resourced and effective victim and witness protection programme outside the control and purview of the regular law enforcement apparatus. In addition, the Government should ensure the independence and integrity of those appointed to the Witness Protection Authority and that the police and all other personnel assigned to this programme are fully vetted;**

(g) **Ensure that each and every existing and new complaint made about a missing person is properly registered and investigated by the police;**

(h) **Ensure that the Attorney General's Department is able to operate independently and pursue prosecutions against any suspected perpetrators of disappearances, irrespective of military rank or official position.**

Truth

79. **The Working Group recommends that the Office of Missing Persons:**

(a) **Adopt a victim-centred approach;**

(b) **Be fully accessible to the families of disappeared persons;**

(c) **Envisage procedures that are easily understandable and documents available in Sinhala, Tamil and English;**

(d) Be equipped with all material, financial and human resources necessary to carry out its huge task;

(e) Have the capacity to subpoena information from any source and witnesses, to enter any State institution, and have free access to any State archive;

(f) Have the technical capacity to conduct exhumations, including forensic expertise;

(g) Provide psychosocial assistance to the relatives in all the stages of the search;

(h) Be possibly integrated with an international component.

80. **The Working Group recommends that the Government of Sri Lanka:**

(a) Ensure that documents, materials, physical remains or other elements uncovered by the Office of Missing Persons and that could potentially be used as evidence before a court of law are managed and preserved in such a way that respects a chain of custody and does not jeopardize their admissibility in a judicial process;

(b) Immediately adopt a comprehensive policy to search for all of those who disappeared;

(c) Carry out wide consultation with victims, victims associations and other civil society organizations to establish a new truth-seeking institution, in order to ensure that it adequately responds to victims' needs;

(d) Consider seeking international assistance with regard to the design, establishment, functioning and follow-up of the new Commission for truth, justice, reconciliation and non-recurrence.

81. **The Working Group recommends that the envisaged truth commission:**

(a) Be composed of independent and professional personnel of the highest moral authority and with extensive human rights experience based on a full and thorough vetting process;

(b) Include staff from the civil society;

(c) Be set up through a comprehensive consultative process with all stakeholders;

(d) Be granted adequate human and financial resources as well as ample powers, including the power to summon current and former officials;

(e) Have the capacity to subpoena information from any source and witness, enter any State institution and have free access to any State archive;

(f) Be equipped with the technical capacity, including forensic expertise, to conduct exhumations.

82. **The Working Group also recommends that the Government of Sri Lanka:**

(a) Transfer the cases of the Presidential Commission on Missing Persons to a credible and independent truth-seeking institution established in close consultation with the families of the disappeared; and ensure that those involved in the process of the search for truth were not involved in any way in the commission of past disappearances;

(b) Ensure that the relevant information generated through previous truth-seeking mechanisms is adequately compiled and formally analysed as a starting point to determining the fate or whereabouts of the disappeared and supporting the

investigation and prosecution of alleged perpetrators; make public and easily accessible all of the reports of previous truth-seeking mechanisms and commissions, including interim reports and other material that had been withheld;

(c) Establish institutional safeguards to make sure that the families of disappeared persons will not suffer any form of revictimization, including by ensuring they will not be requested to reiterate testimonies that they had already given;

(d) Be proactive in carrying out a proper investigation of existing mass graves and in identifying new ones;

(e) Examine, without undue delay, all locations of potential mass graves;

(f) Establish a professionally skilled special unit to probe into the locations of other possible mass graves, reinforce the forensic capacity of the judiciary and ensure that it has adequate resources, including for DNA testing and forensic anthropology and archaeology;

(g) Ensure the proper investigation of existing mass graves, proper preservation of the sites and protection of the chain of custody of the samples. With regard to the Matale mass grave, in particular, the investigation should be reopened and other samples should be sent for further analysis, in the light of the huge discrepancy relating to the dating of the inhumations between the reports currently available on the matter and in the light of the reported signs of torture and extrajudicial execution on some of the remains;

(h) Strengthen the capacity of the DNA laboratory in the Government Analyst's Department and ensure its functional and structural independence from security and law enforcement agencies;

(i) Consider requesting international support for forensic investigations and exhumations as well as for the ensuing investigations and prosecutions, which should be the responsibility of a transitional justice mechanism rather than of the Attorney General's Department;

(j) Immediately open archives, including military archives, relevant to cases of enforced disappearance in order to facilitate the localization of undiscovered gravesites and speed up the search for missing persons;

(k) Promulgate a law on access to information and develop a proper legislative framework on archives so as to guarantee full access to all information that could potentially lead to clarification in cases of disappeared persons;

(l) Develop a gender-sensitive policy and action plan to provide support and rehabilitation for families of disappeared persons, including specific measures to support families of disappeared persons whose death is confirmed through the new truth-seeking processes;

(m) Adopt a gender and child-rights perspective in all policies aimed at reparation, truth and justice, based on the standards developed by the Working Group in its general comments on children and enforced disappearances (see A/HRC/WGEID/98/1 and Corr.1) and on women affected by enforced disappearances (A/HRC/WGEID/98/2).

Justice

83. The Working Group recommends that the Government of Sri Lanka:

(a) Establish a judicial accountability mechanism that integrates international judges, prosecutors, lawyers and investigators;

(b) Guarantee that criminal investigations of enforced disappearances are conducted from the outset by a highly professional and specialized team of prosecutors;

(c) Ensure that the armed forces do not have a role nor can intervene in the investigation, prosecution and trial of these crimes;

(d) Ensure that the judicial accountability mechanism comprises all stages of the prosecution and judicial process and provide access and information to the families of disappeared persons;.

(e) Establish a process to vet all judicial and other officials of the envisaged judicial accountability mechanism in order to secure the professionalism, expertise, independence and impartiality of all those involved in the mechanism;

(f) Bring to trial all cases of enforced disappearance, regardless of the author and the time when they were committed;

(g) Ensure that prosecutors and courts have the capacity to handle all cases of enforced disappearance;

(h) Investigate the material and intellectual authors of such crimes, as well as those hierarchically accountable under the principle of command responsibility;

(i) Carry out all investigations, prosecutions and judicial proceedings in accordance with the principle of due diligence, taking into account the complexity of the enforced disappearances, the context in which they occurred and the patterns that explain why the events occurred, and ensure that there are no omissions in the gathering of evidence or in the development of lines of investigation;

(j) Take all the measures necessary to investigate cases, try and prosecute perpetrators considering the systematic patterns that allowed the commission of serious human rights violations, including enforced disappearances;

(k) Guarantee that the authorities in charge of the investigation have the jurisdictional, logistic and scientific resources necessary to collect and process evidence, and notably the power to access all documents and information relevant to the investigation, including on the possible locations of the victims;

(l) Include in the judicial accountability mechanism trial and appeals chambers, specialized prosecution and defence units, proper units for victim support and witness protection and a professional and competent registry;

(m) Victims and relatives should have extensive opportunities to participate in and be heard during the investigative and judicial proceedings — both with regard to the clarification of enforced disappearances and the punishment of those responsible — and in seeking fair compensation;

(n) Facilitate recourse to the assistance of independent lawyers for the families of disappeared persons during criminal trials;

(o) Adopt legislation to grant more powers to magistrates to ensure the effectiveness of habeas corpus. Magistrates should assume a proactive role in habeas corpus proceedings in order to adopt and carry out all the effective measures necessary to protect a person who allegedly disappeared and secure his or her appearance.

Reparations

84. **The Working Group recommends that the Government of Sri Lanka:**

(a) **Develop, as a matter of urgency, a national reparations policy taking into account the specific needs of women and children and make adequate provisions for it in the State budget;**

(b) **Make reparation measures accessible and applicable to families who accept the issuance of death certificates under duress or without their full and informed consent. In particular, the Government should issue a certificate of absence owing to enforced disappearance and allow all interested families to exchange the death certificate issued for the new certificate of absence due to enforced disappearance;**

(c) **Pay particular attention to adequate, professional and victim-oriented psychosocial assistance for the relatives of the disappeared in relation to both truth and justice processes, in the context of the forthcoming transitional justice mechanisms;**

(d) **Adopt and strengthen existing psychosocial support programmes for victims;**

(e) **Establish mechanisms that provide for social allowances or appropriate social and medical measures for the relatives of disappeared persons in relation to the physical, mental and economic consequences resulting from the absence of the disappeared;**

(f) **Prioritize the educational needs of the children of disappeared persons, including establishing special scholarships exclusively for children of disappeared persons;**

(g) **Formulate and adopt a national resettlement policy to adequately address the needs of displaced persons and victims of enforced disappearances and incorporate the existing national involuntary resettlement policy into domestic law;**

(h) **Pay equal attention to all victims, regardless of their ethnicity, in respect of memorials and consider integrating this principle into future activities related to this element of reparation;**

(i) **Sponsor memorials as well as provide support for civil society remembrance initiatives, including for their proper maintenance through public funds;**

(j) **Erect national and local monuments and establish commemoration days aimed specifically at remembering disappeared persons;**

(k) **Consult with families and other stakeholders in the design of such monuments and in the planning and conducting of commemoration events.**

85. **The Working Group invites the Government of Sri Lanka to submit within 90 days of the date of presentation of the present report to the Human Rights Council a timetable showing the steps that it will take to implement the present recommendations.**